Hup Lee Coachbuilders Holdings Sdn Bhd v Cycle & Carriage Bintang Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)-2007 OF 2011
KN SEGARA, ABU SAMAH AND RAMLY ALI JJCA
1 DECEMBER 2011

Civil Procedure — Locus standi — Action to recover sum — Right to commence action — Whether appellant had locus standi to initiate action — Whether action filed by appellant without having any locus standi invalid and void ab initio — Whether present claim by appellant against respondent was obviously unarguable, unsustainable and abuse of process of court — Rules of the High Court 1980 O 18 r 19(1)(b) & (d) — Companies Act 1965 s 233(2)

Company Law — Liquidation — Right to commence action — Action filed by appellant without leave from official assignee (as liquidator) or court — Whether only official assignee can bring or defend any action or other legal proceeding — Whether appellant usurped powers of liquidator in initiating present action against respondent — Whether action filed by appellant without having any locus standi invalid and void ab initio — Whether subsequent leave or approval by official assignee office which came more than two years later could legalise or validate an action which was invalid and void ab initio — Companies Act 1965 ss 226(3), 233(1), (2), 236(2) & 279

The appellant ('the second plaintiff') together with the first plaintiff were the wholly owned subsidiaries of Kiara Emas Asia Industries Bhd. The new shareholders of Kiara Emas Asia Industries Bhd found out that there were sum of monies paid to the respondent ('the defendant') based on issuance of false invoices. Hence, the present suit was commenced against the respondent by the first and second plaintiffs to recover a certain sum of money. At the time of filing the suit, the appellant was wound up by a court order and the official assignee was appointed a liquidator. The appellant had not obtained any leave either from the court or the liquidator ('official assignee') prior to the filing or commencement of the suit. The appellant had not disclosed its winding up status in the writ and the statement of claim. The respondent (as the defendant in the suit) objected to the appellant's locus standi to initiate the action. Accordingly, the first plaintiff was directed by the court to amend its writ and statement of claim, to remove the appellant or to obtain sanction, but it failed to do so. Thus, the action was struck out, as the amendment was not made as directed. On the appellant's application, the action was reinstated on condition that if sanction was not obtained by 30 November 2010, the first plaintiff was

to amend the statement of claim and remove the appellant ('the second plaintiff') from the action; or alternatively, if sanction was obtained by the above date, the plaintiffs were to write to the Managing Judge Unit to fix for case management. Finally, on 3 March 2011 the appellant had obtained the sanction after fulfilling all the relevant requirements or conditions as stated in the letter dated 29 November 2010. In the meantime, on 28 February 2011 the respondent filed the present application to strike out the appellant's claim against the respondent under O 18 r 19(1)(b) and (d) of the Rules of the High Court 1980 ('RHC') on the grounds, inter alia, that the appellant, being a wound up company had failed to obtain leave of the court before commencing the present action and therefore had no locus standi to proceed with the action against the respondent; and the appellant's action was therefore vexatious, frivolous and scandalous, and also an abuse of the court process. The said application to strike out was allowed by the High Court. Hence the present appeal before this court. The appellant submitted here as well as at the court below, that there was no basis whatsoever for the respondent to strike out the appellant's claim in this action as it is trite that the appellant does not need to obtain leave under s 226(3) of the Companies Act 1965 to continue with this action. The appellant maintained that s 226(3) requires that leave was only to be obtained if the action was brought against the wound up company (as a defendant), but not where the wound up company is the one who instituted or commenced the suit as a plaintiff to the proceedings. The respondent on the other hand, submitted that once a company is wound up, all assets and affairs of the company is in the hand of the liquidator; and pursuant to s 233(1) and (2) of the Companies Act 1965 the liquidator has control of all the property and things in action to which the company is or appears to be entitled and it is the appointed liquidator who has the discretion to proceed or to commence an action on behalf of the company.

Held, dismissing the appeal with costs:

(1) The suit in question was an action commenced or brought by the wound up company (the appellant). The appellant was the plaintiff (not a defendant) in the said action. This is not a case where an action was brought against the wound up company. Under s 226(3) of the Companies Act 1965, leave of court is only required if the wound up company is cited as a defendant. Therefore the issue of obtaining leave from the court under s 226(3) did not arise. Section 226(3) was not applicable here (see para 9).

(2) It is a fundamental principle of law that once a limited company is wound up, its assets and liabilities vest in the liquidator appointed. It is up to him to decide whether to institute, continue the prosecution of or defend legal proceedings. However, there is jurisdiction in the court to authorise other persons to conduct litigation in the name of the company (see para 11).

(3) At the time of filing the present action, all the property as well as things in action to which the appellant company was or appeared to be entitled, were vested in the liquidator appointed (the official assignee). It is only the official assignee who can bring or defend any action or other legal proceeding which relates to that property or which it was necessary to bring or defend for the purpose of effectually winding up the company and recovering its property. In other words, only the official assignee has the necessary locus standi to commence the action on behalf of the appellant company against the respondent. The appellant company itself or its shareholders or its directors had no locus standi to do so without the leave of the official assignee or the court. An action filed by the appellant without any leave from the official assignee (as liquidator) or the court or filed by the appellant without having any locus standi to do so in law was clearly illegal and invalid (see para 14).

(4) The appellant or its shareholders or creditors could not usurp the powers of the liquidator in initiating the present action against the respondent. The appellant cannot commence the action and then later, after objections raised by the respondent, apply for leave or sanction from the official assignee. The authority given by the official assignee was dated 3 March 2011, more than two years and three months after the action was filed in court. There are no provisions of law to authorise that leave or sanction of the official assignee is to have retrospective effect. The appellant lacked locus standi right from the time the action was filed. Therefore, the action was invalid and *void ab initio*. The subsequent leave or approval by the official assignee's office which came more than two years later could not legalise or validate an action which was invalid and void ab initio (see para 16).

[Bahasa Malaysia summary

Perayu ('plaintif kedua') bersama-sama dengan plaintif pertama merupakan pemilik penuh subsidiari-subsidiari Kiara Emas Asia Industries Bhd. Pemegang-pemegang saham baru Kiara Emas Asia Industries Bhd mendapati bahawa terdapat jumlah wang yang dibayar kepada responden ('defendan') berdasarkan pengeluaran invois palsu. Oleh itu, guaman ini telah dimulakan terhadap responden oleh plaintif pertama dan kedua untuk mendapatkan sejumlah wang. Ketika memfailkan saman tersebut, perayu telah digulung oleh perintah mahkamah dan pegawai pemegang harta telah dilantik sebagai pelikuidasi. Perayu tidak mendapat apa-apa keizinan sama ada daripada mahkamah atau pelikuidasi ('pegawai pemegang harta') sebelum pemfailan atau permulaan guaman tersebut. Perayu tidak mendedahkan status penggulungannya dalam writ dan penyata tuntutan. Responden (sebagai defendan dalam guaman tersebut) membantah locus standi perayu untuk memulakan guaman. Sehubungan itu, plaintif pertama telah diarahkan oleh mahkamah untuk meminda writ dan pernyataan tuntutan, untuk

menyingkirkan perayu atau untuk mendapatkan sanksi, tetapi ia gagal untuk berbuat demikian. Oleh itu, tindakan tersebut dibatalkan, kerana pindaan tersebut tidak dibuat seperti yang diarahkan. Dengan permohonan perayu, tindakan tersebut dihidupkan semula dengan syarat bahawa jika sanksi tidak diperolehi pada 30 November 2010, plaintif pertama perlu meminda pernyataan tuntutan dan menyingkirkan perayu ('plaintif kedua') daripada tindakan tersebut; atau secara alternatif, jika sanksi berjaya diperoleh pada tarikh tersebut, plaintif perlu menulis kepada Unit Pengurusan Hakim untuk menetapkan pengurusan kes. Akhirnya, pada 3 Mac 2011 perayu telah mendapat sanksi selepas memenuhi kesemua keperluan yang berkaitan atau keadaan-keadaan seperti yang dinyatakan dalam surat bertarikh 29 November 2010. Sementara itu, pada 28 Februari 2011, responden memfailkan permohonan ini untuk membatalkan tuntutan perayu terhadap responden di bawah A 18 k 19(1)(b) dan (d) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') atas alasan, antara lain, bahawa perayu, sebagai syarikat yang telah digulung telah gagal mendapatkan keizinan mahkamah sebelum memulakan tindakan ini dan oleh itu tidak mempunyai locus standi untuk meneruskan dengan tindakan terhadap responden; dan oleh itu, tindakan perayu remeh dan bersifat skandal, dan juga merupakan suatu salahguna proses mahkamah. Permohonan untuk membatalkan telah dibenarkan oleh Mahkamah Tinggi. Dengan itu, rayuan ini. Perayu mengemukakan di mahkamah ini serta di mahkamah bawahan, bahawa tiada sebarang asas bagi responden untuk membatalkan tuntutan perayu dalam tindakan ini kerana ia adalah undang-undang tetap bahawa perayu tidak perlu mendapatkan keizinan di bawah s 226(3) Akta Syarikat 1965 untuk meneruskan dengan tindakan ini. Perayu menegaskan bahawa s 226(3) memerlukan keizinan yang hanya akan diperolehi jika tindakan tersebut dibawa terhadap syarikat yang digulung (sebagai defendan), tetapi tidak di mana syarikat yang digulung adalah syarikat yang memulakan guaman tersebut sebagai plaintif kepada prosiding. Responden, sebaliknya, menghujahkan bahawa apabila syarikat digulung, kesemua aset dan hal ehwal syarikat berada dalam tangan pelikuidasi; dan menurut s 233(1) dan (2) Akta Syarikat 1965, pelikuidasi mempunyai kawalan ke atas kesemua harta dan perkara-perkara dalam tindakan yang mana syarikat adalah atau ternyata adalah berhak dan pelikuidasi yang dilantik mempunyai budi bicara untuk meneruskan atau memulakan suatu tindakan bagi pihak syarikat.

Diputuskan, menolak rayuan dengan kos:

(1) Guaman yang menjadi pertikaian adalah suatu tindakan yang dimulakan atau dibawa oleh syarikat yang digulung (perayu). Perayu adalah plaintif (bukan defendan) dalam tindakan tersebut. Ini bukanlah kes yang mana suatu tindakan dibawa terhadap syarikat yang digulung. Di bawah s 226(3) Akta Syarikat 1965, keizinan mahkamah hanya diperlukan jika syarikat yang digulung dinamakan sebagai defendan. Oleh itu, isu

mendapat keizinan mahkamah di bawah s 226(3) tidak berbangkit. Seksyen 226(3) tidak terpakai di sini (lihat perenggan 9).

(2) Adalah prinsip asas undang-undang bahawa apabila sebuah syarikat berhad digulung, aset dan liabiliti yang terletakhak pada pelikuidasi yang dilantik. Terpulang kepadanya untuk memutuskan sama ada untuk memulakan, meneruskan pendakwaan atau membela prosiding undang-undang. Walau bagaimanapun, terdapat bidang kuasa mahkamah untuk membenarkan orang lain untuk menjalankan litigasi di bawah nama syarikat (lihat perenggan 11).

(3) Ketika memfailkan tindakan ini, kesemua harta serta perkara-perkara dalam tindakan yang mana syarikat perayu adalah atau ternyata berhak, telah terletakhak pada pelikuidasi yang dilantik (pegawai pemegang harta). Hanya pegawai pemegang harta yang boleh membawa atau membela apa-apa tindakan atau prosiding undang-undang lain yang berkaitan dengan harta tersebut atau yang perlu untuk membawa atau membela bagi tujuan menggulung syarikat secara berkesan dan mendapatkan semula hartanya. Dalam erti kata lain, hanya pegawai pemegang harta yang mempunyai locus standi yang diperlukan untuk memulakan tindakan bagi pihak syarikat perayu terhadap responden. Syarikat perayu sendiri atau pemegang saham atau pengarah tidak mempunyai locus standi untuk berbuat demikian tanpa keizinan pegawai pemegang harta atau mahkamah. Sesuatu tindakan yang difailkan oleh perayu tanpa apa-apa keizinan daripada pegawai pemegang harta (sebagai pelikuidasi) atau mahkamah atau difailkan oleh perayu tanpa mempunyai apa-apa locus standi untuk berbuat demikian di sisi undang-undang adalah jelas salah di sisi undang-undang dan tidak sah (lihat perenggan 14).

(4) Perayu atau pemegang saham atau pemiutang tidak boleh merampas kuasa pelikuidasi dalam memulakan tindakan ini terhadap responden. Perayu tidak boleh memulakan tindakan dan kemudian, selepas bantahan dibangkitkan oleh responden, memohon keizinan atau kebenaran daripada pegawai pemegang harta. Kuasa yang diberikan oleh pegawai pemegang harta bertarikh 3 Mac 2011, adalah lebih daripada dua tahun dan tiga bulan selepas tindakan tersebut difailkan di mahkamah. Tiada peruntukan undang-undang yang memberi kuasa bahawa keizinan atau sanksi pegawai pemegang harta mempunyai kesan retrospektif. Perayu tidak mempunyai locus standi sejak dari masa tindakan tersebut difailkan. Oleh itu, tindakan tersebut adalah tidak sah dan void ab initio. Keizinan berikutnya atau kebenaran oleh pegawai pemegang harta yang berbangkit lebih daripada dua tahun kemudian tidak boleh membenarkan atau mengesahkan suatu tindakan yang tidak sah dan void ab initio (lihat perenggan 16).]

Cases referred to

Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd (formerly known as Jupiter Synergy Sdn Bhd) [2005] 1 MLJ 333, HC (refd)
Cheng Heng Ping & Ors v Perwira Affin Bank Bhd [1998] MLJU 576; [1999] 1 CLJ 611, HC (refd)
HJ Industries Sdn Bhd & Anor v Wen Ken Properties Sdn Bhd [2005] 1 LNS 308, HC (refd)
Russel v Westpac Banking Corporation (1994)13 ACSR 5, SC (refd)
Zaiton Marketing Sdn Bhd v Boustead Eldred Sdn Bhd [2010] 3 CLJ 785, FC (refd)

Legislation referred to

Companies Act 1965 ss 226(3), 233(1), (2), 236(2), 279
Rules of the High Court 1980 O 18 r 19, 19(1)(b), (d)

Appeal from: Suit No D–22–1223 of 2009 (High Court, Kuala Lumpur)

Brian Cumming (YJ Yap with him) (Gideon Tan Razali Zaini) for the appellant.
Deepinder Kaur (David Lingam & Co) for the respondent.

Ramly Ali JCA (delivering judgment of the court):

[1] This is an appeal by the second plaintiff ('the appellant') against the decision of the Kuala Lumpur High Court dated 1 July 2011 in allowing the defendant's ('respondent's') application vide encl 18 to strike out the appellant's claim under O 18 r 19(1)(b) and (d) of the Rules of the High Court ('RHC') 1980.

FACTS OF THE CASE

[2] The appellant together with the first plaintiff were the wholly owned subsidiaries of Kiara Emas Asia Industries Bhd. Their main businesses are manufacturing, fabrication and assembly of body parts for buses, trucks, coaches, and sale and purchase of engine chassis.

[3] The new shareholders of Kiara Emas Asia Industries Bhd found out that there were sum of monies paid to the respondent based on issuance of false invoices. Therefore on 26 June 2009 the present suit was commenced against the respondent. The first plaintiff's claim is for the sum of RM8,127,559 and the appellant's ('the second plaintiff's') claim is for the sum of RM11,524,080.49. At the time of filing the suit, the second plaintiff (the appellant) was wound up by a court order dated 30 May 2006 and the official assignee was appointed a liquidator. The appellant had not obtained any leave either from the court or the liquidator ('official assignee') prior to the filing or

commencement of the suit. The appellant had not disclosed its winding up status in the writ and the statement of claim. A

[4] The respondent (as the defendant in the suit) objected to the appellant's locus standi to initiate the action. On 21 May 2010, the first plaintiff was directed by the court to amend its writ and statement of claim, to remove the appellant or to obtain sanction, but it failed to do so. Thus, the action was struck out, as the amendment was not made as directed. B

[5] On 12 November 2010, on the appellant's application the action was reinstated on condition that if sanction was not obtained by 30 November 2010, the first plaintiff was to amend the statement of claim and remove, the appellant (second plaintiff) from the action; or alternatively if sanction was obtained by 30 November 2010, the plaintiffs were to write to the Managing Judge Unit to fix for case management. Conditional sanction was communicated by the official assignee office to the appellant's solicitor vide his letter dated 29 November 2010. Finally, on 3 March 2011 the appellant had obtained the sanction after fulfilling all the relevant requirements or conditions as stated in the letter dated 29 November 2010. C D

[6] In the meantime, on 28 February 2011 the respondent filed the present application to strike out the appellant's claim against the respondent under O 18 r 19(1)(b) and (d) of the RHC 1980 on the grounds, inter alia, that the appellant, being a wound up company has failed to obtain leave of the court before commencing the present action and therefore has no locus standi to proceed the action against the respondent; and the appellant's action is therefore vexatious, frivolous and scandalous, and also an abuse of the process. On 1 July 2011, the said application to strike out was allowed by the High Court. Hence the present appeal before us. E F

[7] Learned counsel for the appellant submitted here as well as at the court below, that there is no basis whatsoever for the respondent to strike out the appellant's claim in this action as it is trite that the appellant does not need to obtain leave under s 226(3) of the Companies Act 1965 to continue with this action. The appellant maintained that s 226(3) requires that leave is only to be obtained if the action is brought against the wound up company (as a defendant), but not where the wound up company is the one who instituted or commenced the suit as a plaintiff to the proceedings. G H

[8] The respondent on the other hand, submitted that once a company is wound up, all assets and affairs of the company is in the hand of the liquidator; and pursuant to s 233(1), (2) of the Companies Act 1965 the liquidator has control of all the property and things in action to which the company is or appears to be entitled and it is the appointed liquidator who has the discretion I

to proceed or to commence an action on behalf of the company.

FINDINGS OF THIS COURT

[9] In the present case, the suit in question is an action commenced or brought by the wound up company (the appellant). The appellant was the plaintiff (not a defendant) in the said action. This is not a case where an action was brought against the wound up company. Under s 226(3) of the Companies Act 1965, leave of court is only required if the wound up company is cited as a defendant. Therefore the issue of obtaining leave from the court under s 226(3) does not arise. Section 226(3) is not applicable here. (see *HJ Industries Sdn Bhd & Anor v Wen Ken Properties Sdn Bhd* [2005] 1 LNS 308).

[10] The relevant provisions relating to the present case is not s 226(3) of the Companies Act 1965 as submitted by the appellant's counsel, but s 233(1), (2) of the same Act which provides:

> (1) Where a winding-up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled.
>
> (2) The court may, on the application of the liquidator, by order direct that all or any part of the property of whatsoever description belonging to the company or held by trustees on its behalf shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity, if any, as the court directs, bring or defend any action or other legal proceeding which relates to that property or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

[11] It is a fundamental principle of law that once a limited company is wound up, its assets and liabilities vest in the liquidator appointed. It is up to him to decide whether to institute, continue the prosecution of or defend legal proceedings. However, there is jurisdiction in the court to authorise other persons to conduct litigation in the name of the company. This principle was adopted by the Federal Court in the case of *Zaiton Marketing Sdn Bhd v Boustead Eldred Sdn Bhd* [2010] 3 CLJ 785.

[12] In *Russel v Westpac Banking Corporation* (1994) 13 ACSR 5, King CJ when delivering the judgment of the Full Court of South Australia said:

> When the company is in liquidation, the person in whom is vested the authority to institute proceedings, is the liquidator. *Scarel Pty Ltd v City Loan & Credit Corporation Pty Ltd* (1988) 12 ACLR 730. There is power, however, in the court to

authorise other persons to conduct litigation in the name of the company: *Cape Breton Company v Fenn* (1881) 17 Ch D 198; *Aliprandi v Griffith Ventures Pty Ltd* [1991] 6 ACSR 250.

[13] In the present case, it is not in dispute that at the time when the present action was initiated or commenced by the appellant (as the second plaintiff) against the respondent on 26 February 2009, the appellant was already wound up since 30 May 2006. It is also not in dispute that at that time the appellant had not obtained any leave either from the official assignee, nor from the court to commence the said action. Unconditional leave from the official assignee office was only obtained on 3 March 2011, after the appellant had fulfilled all the necessary requirements imposed by the official assignee (by that time the respondent had already filed the present application to strike out the appellant's action).

[14] At the time of filing the present action all the property as well as things in action to which the appellant company was or appeared to be entitled, were vested in the liquidator appointed (the official assignee). It was only the official assignee who can bring or defend any action or other legal proceeding which relates to that property or which it was necessary to bring or defend for the purpose of effectually winding up the company and recovering its property. In other words, only the official assignee has the necessary locus standi to commence the action on behalf of the appellant company against the respondent. The appellant company itself or its shareholders or its directors have no locus standi to do so without the leave of the official assignee or the court. An action filed by the appellant without any leave from the official assignee (as liquidator) or the court or filed by the appellant without having any locus standi to do so in law is clearly illegal and invalid. The said action ought to be struck out.

[15] Section 236(2) of the Companies Act 1965 strengthens the position that only the official assignee as the appointed liquidator has the power to bring or defend any action or other legal proceeding in the name and on behalf of the wound-up company. If for whatever reason, the official assignee as the liquidator is unwilling to initiate the action in the name of the wound up company, a creditor or a contributory can apply to the court under ss 236(3) or 279 of the Companies Act 1965 seeking an order that the liquidator be compelled to initiate the action in the name of the wound up company or that leave be given to the creditor or contributory himself to bring the action in the name of the company. (see *Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd (formerly known as Jupiter Synergy Sdn Bhd)* [2005] 1 MLJ 333; and *Zaiton Marketing Sdn Bhd v Boustead Hired Sdn Bhd*). Again, to do so, the creditor or the contributory must have obtained leave of the court before commencing the action in the name and on behalf of the wound up company.

[16] There is no evidence to show that the commencement of the present action by the appellant itself on 26 February 2009 was done with the knowledge and authority of the official assignee as the liquidator. Clearly, the appellant or its shareholders or creditors cannot usurp the powers of the liquidator in initiating the present action against the respondent. The appellant cannot commence the action and then later, after objections raised by the respondent, apply for leave or sanction from the official assignee. The authority given by the official assignee is dated 3 March 2011, more than two years and three months after action was filed in court. There are no provisions of law to authorise that leave or sanction of the official assignee is to have retrospective effect. The appellant lacks locus standi right from the time when the action was filed. Therefore the action was invalid and void ab initio. Subsequent leave or approval by the official assignee office which came more than two years later cannot legalise or validate an action which was invalid and void ab initio.

[17] On the same issue, we are in agreement with Abdul Malik Ishak J in the case of *Cheng Heng Ping & Ors v Perwira Affin Bank Bhd* [1978] MLJU 576; [1999] 1 CLJ 611 when His Lordship stated as follows:

> After Campall had been wound-up, all the properties of Campall came under the control of the official assignee as the liquidator. Now, when the present suit was filed on 18 September 1997, the present plaintiffs were no longer in control of Campall and therefore the present plaintiffs have no legitimate right to proceed with the present suit. To allow the present plaintiffs to proceed with the present suit would tantamount to giving them the right to claim on behalf of Campall at the expense of the official assignee and other creditors of Campall. This would open the floodgate. Imagine the situation where former directors or shareholders of a company that has been wound up, take control and oust the liquidator by filing a civil suit against the debtors of the company in their individual names and benefit themselves only without regard to the liquidator and the creditors of the company. Chaos would prevail. The rights of the liquidator and creditors would be at stake. In my judgment, it was an abuse of the process of the court when the present plaintiffs filed the present civil suit.

CONCLUSION

[18] The learned High Court judge allowed the respondent's application to strike out the appellant's claim on the ground that the appellant had failed to obtain leave under s 226(3) of the Companies Act 1965 before filing the action against the respondent. We respectively agree with the learned judge that the appellant's claim against the respondent should be so struck out but for a different reason than that was given by the learned judge. As stated earlier, we are of the view that s 226(3) is not applicable in the present case because the action in question is not proceeded with or commenced against the appellant, but commenced by the appellant against the respondent. We are of the view that the action by the appellant against the respondent should be struck out on

the ground of failure on the part of the appellant to obtain prior leave or sanction either from the official assignee as liquidator or the court under s 233(2) of the Companies Act 1965.

[19] This is a clear case for the court to invoke its power under O 18 r 19 of the RHC 1980, to ensure that any claim brought by the appellant against the respondent has a basis on which the court may eventually adjudicate. With respect, the present claim by the appellant against the respondent is obviously unarguable, unsustainable and an abuse of the process of the court.

[20] On the above considerations, we dismiss the appeal with costs of RM10,000 to the respondent. We also make an order that the deposit be paid to the respondent on account of fixed costs.

Appeal dismissed with costs.

Reported by Ashgar Ali Ali Mohamed